"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी.2-22-छत्तीसगढ़ गजट / 38 सि. से. भिलाई, दिनांक 30-05-2001."

पंजीयन क्रमांक
"छत्तीसगढ़/दुर्ग/09/2013-2015."

छत्तीसगढ़ राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 548] रायपुर, मंगलवार, दिनांक 19 दिसम्बर 2017—— अग्रहायण 28, शक 1939

कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़

शास्त्री चौक, पुराना मंत्रालय परिसर, रायपुर

रायपुर, दिनांक 1 दिसम्बर 2017

अधिसूचना

क्रमांक -18/03/निर्वाचन याचिका/2017/2071.—— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में भारत निर्वाचन आयोग द्वारा निर्वाचन अर्जी संख्या-06/2014 में दिए गए उच्च न्यायालय, छत्तीसगढ़, बिलासपुर के आदेश दिनांक 18 मई, 2017 को प्रकाशित करने वाली अधिसूचना एतद्द्वारा सर्वसाधारण की जानकारी हेतु प्रकाशित किया जाता है.

हस्ता./-
(सुब्रत साहू)
मुख्य निर्वाचन पदाधिकारी.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

नई दिल्ली, तारीख 16 नवम्बर 2017 —— 25 कार्तिक, 1939 (शक)

अधिसूचना

संख्या 82/ES-1/EP(6/2014)/CG-LA/2017.—— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में, निर्वाचन आयोग एतद्द्वारा निर्वाचन अर्जी सं. 06/2014 में दिये गये उच्च न्यायालय, छत्तीसगढ़, बिलासपुर के तारीख 18 मई, 2017 के आदेश को प्रकाशित करता है.

आदेश से,

हस्ता./-
(के. एन. भार)
प्रधान सचिव.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi -110001

New Delhi, Dated 16th November 2017 ——25 Kartika 1939 (Saka)

NOTIFICATION

No. 82/ES-1/EP(6/2014)/CG-LA/2017.—— In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Order dated the 18th May, 2017 of the High Court of Chhattisgarh, Bilaspur in Election Petition No. 6 of 2014.

By Order,

Sd/-
(K. N. Bhar)
Principal Secretary.

HIGH COURT OF CHHATTISGARH, BILASPUR

EP No. 6 of 2014

- Dr. Thaneshwar Patila S/o Dhanesh Patila Aged About 26 Years R/o Paneka, Dist. Rajnandgaon C.G. **--- Petitioner**

Versus

1. Smt. Sarojani Banjare W/o Jivan Banjare Aged About 35 Years R/o P.O. Barbaspur, Uparvah, Distt. Rajnandgaon C.G.
2. Sanjeev Kumar Dongare S/o C.L. Dongare Aged About 33 Years R/o Bhagat Singh Ward No. 17, Dongargarh, Distt. Rajnandgaon C.G.
3. Santosh Mariya S/o Sumery Mariya Aged About 39 Years R/o Khanjari Tahsil pipadiaya Distt. Rajnandgaon C. G.
4. Shriniwas Janbandhu S/o Aasharam Janbandhu Aged About 47 Years R/o At P.O. & P.S. Dongargarh, Distt. Rajnandgaon C. G.
5. Dilip Koosre S/o Reshamlal Kosre Aged About 32 Years R/o Gidhva P.O. Uparvah, Distt. Rajnandgaon C. G.
6. Vikas Banjari S/o Chaturdas Banjari Aged About 29 Years R/o 619 Indira Ward No. 02, Danteshwari Para Dongargarh, Distt. Rajnandgaon C. G.
7. Om Prakash Kurre S/o Amarsingh Kurre Aged About 25 Years R/o At P.O. Dumardi, Tah. Ghumka, Distt. Rajnandgaon C.G.
8. Pannalal Suryavanshi S/o Makhanlal Suryavanshi Aged About 52 Years R/o At P.O. & P.S. Ghumka, Distt. Rajnandgaon C.G.
9. Om Prakash Tembhurnikar S/o Rum Ran Tembhurnikar Aged About 47 Years R/o House No. 77, Ambedkar Ward, Dongargarh Distt. Rajnandgaon C.G. **--- Respondents**

For the Petitioner : Mr. S. C. Verma, Shri Rajat Agrawal and Shri Durgesh Goyal, Advocates.

For the Respondent No.1 : Mr. R. K. Kesarwani, Mr. Ravish Verma, Advocates.

For respondent No.2 : Mr. B.P. Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. JUDGMENT

Judgment reserved on 11.04.2017

Judgment delivered on 18th .05.2017

1. The present election petition is concerned with the election held in the year 2013 for the Chhattisgarh State Legislative Assembly Area No.74 of Dongargarh constituency and the result of the election was declared on 08.12.2013 and respondent No.1 Smt. Sarojani Banjari was declared as returned candidate.

2. The present petition is filed by one of the contesting candidates Dr. Thaneshwar Patila whos candidature was sponsored by the Indian National Congress and the candidature of returned candidate/respondent No. 1 Smt. Sarojani Banjare was sponsored by Bhartiya Janta Party. Respondent No.1 was declared elected as returned candidate and she secured 67158 votes whereas the petitioner secured 66474 votes and the other respondents secured different number of votes. The constituency was reserved for the category of Scheduled Caste.

3. The challenge to the election of respondent No.1 Smt. Sarojani Banjari is made on the ground that since the seat was reserved for S.C. Category, as such, the nomination which was filed by her could only have been accompanied with a valid caste certificate. It is contended that filing of nomination on the basis of invalid caste certificate itself is bad, consequently the election which was contested by respondent No.1 on the basis of caste certificate was a nullity and against the provisions of section 5(a) of the Representation of

People Act 1951. It is further contended that the State of Chhattisgarh has promulgated the Chhattisgarh Scheduled Castes, Scheduled Tribes and other Backward classes (Regulation of Social Status Certification) Act, 2013 (henceforth called as "The Act of 2013") in the Gazette on 29.04.2013 and the rules are made prescribing the procedure to obtain the caste certificate.

4. (I) Shri S. C. Verma, learned counsel appearing for the petitioner would further submit that Section 10 of the Act, 2005 contemplates Penal Provision and in the instant case, the caste certificate which was issued on 23.10.2013 was issued without following the procedure prescribed in such Act, of 2013, it is further contended that earlier on 16.11.2009 the respondent returned candidate was issued a temporary caste certificate from Dongargarh, therefore, issuance of second caste certificate was completely invalid. It is further contended that respondent No.1 was born and brought up at Maharashtra and used the caste certificate which was issued at Maharashtra. Therefore, holding a certificate already at Maharashtra, the another certificate could not have been issued by the State of Chhattisgarh. It is stated that though respondent No.1 obtained the benefit on the basis of the caste certificate at Maharashtra yet while contesting the election at Chhattisgarh she suppressed the fact of earlier position of the caste certificate, consequently the fresh certificate from the State of Chhattisgarh could not have been permitted to be issued on which Respondent No.1

contested the election. In the result, it is submitted that respondent No.1 (for short "R-1") was not qualified to contest the election for the Assembly Constituency which was reserved for the scheduled caste candidate.

(ii) Referring to the document Ex.P-3 which is a College leaving/Transfer certificate issued by Binzani Nagar Mahavidyalaya, Nagpur, it was contended that in the certificate respondent No.1 was shown as Satnami by caste and in Ex. P. 4 also respondent No. 1 was shown as Satnami by Caste and it is further stated that Ex. P. 5 was the application filed at Nagpur with necessary enclosures which would be evident at the back page of such certificate and on the basis of the said caste certificate respondent No. 1 obtained the benefit of scholarship as evident from Annexure P. 6. It is further submitted that after coming to Chhattisgarh, similar state of affairs was repeated and Ex. P-7 was issued as a temporary caste certificate despite the fact that neither the documents were filed nor any enquiry was conducted. He referred to the statement P.W.1 and contended that after issuance of temporary caste certificate, Ex. P-8 the permanent caste certificate was issued on 23.10.2013. It is stated that neither any document was considered nor it was filed before issuance of such certificate.

(iii) It is stated that the Chhattisgarh Scheduled Castes, Scheduled Tribes and other Backward Classes (Regulation of Social Status Certification) Rules, 2013 (henceforth called as "the Rules of 2013) mandates that

the authority issuing the certificate should be satisfied that necessary facts exist for issuance of caste certificate but before issuing such certificate the officer concerned have not satisfied themselves about the existence of facts to issue such certificate, thereby, the officers were hand in gloves with respondent No.1 and hurriedly the caste certificate was issued on the same day i.e., 23.10.2013 when it was applied on the same date.

(Iv) Referring to Ex.P-9 which is a permanent certificate issued on 23.10.2013 it is stated that the final certificate which was issued was an outcome of fraud as the places of residence have been differently shown in Ex.P-7 which is a temporary caste certificate wherein the residence of respondent No.1 is shown as Rajnandgaon whereas in Ex.P-9 the permanent caste certificate the residence was shown as Pathariya.

(v) It is further contended that after filing of the nomination papers on the basis of such caste certificate, the petitioner filed objection through its representative by Ex.P.12 to cancel the nomination form but it was not considered and favour was made to respondent No.1. Referring to the document filed by respondent, it is stated that Ex.D-1(C) would show that the nomination form was filed on 24.10.2013. It is further contended that the said application filed on the basis of caste certificate of 23.10.2013 and Ex.D-5 & D-6 would show that the forefathers of respondent No.1 were residents of Pathariya whereas in Ex.P-7, the respondent is shown

to be resident of Rajnandgaon. Therefore, it is stated that the Rules 2013 provides for certain procedure to be followed whereas in the instant case, it would reveal that on the date when the caste certificate was applied, without verification of the mandate of Rules of 2013, the caste certificate was issued. It is further submitted that wrong different residential address was shown while obtaining the caste certificate and it was deliberately sidelined by the officer concerned to favour respondent No.1. It was again submitted that if respondent No.1 was already holding the caste certificate which was issued from Rajnandgaon, the similar caste certificate could not have been issued from Mungeli.

(vi) Referring to the Act of 2013, it is stated that certain procedure was prescribed u/ss 3 & 4 of the Act, 2013 which is followed by the Rules of 2013 and it has prescribed the procedure and format of applications and in absence of such format if the caste certificate has been issued, it would not have any authenticity in the eyes of law.

(vii) Learned counsel would further refer to the statement of P.W.1 Dr. Thaneshwar Patila and would submit that respondents have themselves admitted the fact that respondent No.1 had obtained the benefit on the basis of the caste certificate at Maharashtra and P.W.6, Naib Tahsildar, Rajnandgaon stated that the first certificate was issued to respondent No.1 on 30.04.2005 and stated that at the relevant time, the certificate was issued, the necessary documents should have been filed

for bonafide residence prior to 1950, but in absence thereof the certificate was issued. Further referring to the statement of P.W.7 R.K. Gupta, the Tahsildar, it is stated that no procedure was followed while issuing the caste certificate, therefore, such certificate is not projected as a valid one to be acted upon and contrary to the provisions of the Act, 2015 and the Rules made thereunder.

(viii) Learned counsel for further referred to the case laws reported in ***(1990) 3 SCC 130 Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical Collecge and others (2009) 15 SCC 458 Subhash Chandra Vs. Delhi Subordinate Services Selection Board*** and submitted that the caste certificate which was issued to the respondent is without any statutory support, therefore, the election contested by the respondent on the basis of the caste certificate is invalid.

(ix) Further referring to the statement of P.W.6, it is stated that the respondent before issuance of the certificate only attached the transfer certificate of College and the certificate of XIIth Pass from Nagpur that too Photocopy was placed. It is further stated that this witness who was officer in contributing to the issuance of certificate, has not recorded any statement of respondent which would go to show that no procedure was adopted. Subsequently, it is contended that P.W.7 P.K. Gupta who was Tahsildar of Pathariya has received the application for caste certificate

addressed to the SDO but no marking was made over it and when the application received is in the order sheets, the same is endorsed, thereafter the same has to be procedurally forwarded to the SDO, but in this case no oder sheet has been filed, therefore, no procedure was adopted before the Tahsildar Pathariya before issuance of such certificate.

(x) Further referring to the statement of P.W.9, it is stated that initially all the work was done at the level of Tahsildar Pathariya on 23.10.2013, later it was sent to the office of SDO and the SDO on the basis of the material forwarded by the Tahsildar has issued certificate thereby no procedure was followed. It is stated that the SDO Pathariya has issued the permanent caste certificate Ex.P.9 on 23.10.2013 which was only made on the recommendation of the Tahsildar and no separate enquiry or official follow-up action was made by the office of SDO, therefore, again the procedural lapse as required under the Rules of 2013 was committed.

(xi) It is further stated that sub-section (2) of section 33 of the Representation of the People Act, 1951 mandates that the declaration has to be given by the candidate when the seat is reserved in respect of a particular Caste or Tribe. In the case in hand, the false declaration was given, therefore, filing of nomination paper itself was illegal, as such, gross irregularity was committed. It is further stated that during the scrutiny of nominations, section 36(2) calls for summary enquiry

in case any objection is preferred. But the order rejecting the enquiry would show that no opportunity was given and in slipshod manner, the enquiry was conducted so as to favour the respondent/ returned candidate. He stated that as per Section 100(1)(a), on the date itself the returned candidate was qualified to be chosen to fill the seat which was a reserved seat and therefore the electoral offence u/s 125-A(ii)(iii) was committed.

(xii) Counsel has further placed reliance on **(1990) 3 SCC 130 -Marri Chandra Shekar Rao Vs. Dean, Geth G.S. Medical College** *(supra)* and stated that the migration form one State to another was made as it has been done in this case from Nagpur to Chhattisgarh and the petitioner who might be Scheduled Caste even in the other State would not get the benefit of such migration. Further the reference was also made on a case law reported in **(1994) 5 SCC 244** – ***Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another Vs. Union of India and another*** to contend that the petitioner was borne and studied at Nagpur, therefore, after prosecuting her studies and taking advantage of caste at Maharashtra, the respondent could not have taken benefit of such migration.

(xiii) Further the reference was made to ***(2009) SCC 15 458*** to show that the the respondent having migrated from Maharashtra to Chhattisgarh would not

automatically come within the purview of category of backward or SC/ST classes in the State of Chhattisgarh and therefore under the facts and circumstances of the case, the election of the respondent completely vitiates on the ground of fraud and the election of respondent be set aside.

5. (i) Per contra, Shri R.K.Kesarwani and Ravish Verma, learned counsel appearing on behalf of the respondent No.1 would submit that only relief claimed against respondent No.1 is that she was not eligible to contest whereas no relief is sought against the other respondents which would show the malafide intention of the petitioner. It is submitted that as per section 83 of the Representation of the People Act, 1950, affidavit should have been filed in proper manner as section 87 of the R.P. Act, 1951 governs the same and section 87 prescribed the procedure before the High Court wherein Code of Civil Procedure has been made applicable. He stated that the petitioner has tried to project fraud but no such particulars have been pleaded as required under Order 6 Rule 4 of CPC.

(ii) It is further submitted that the election petition is also not properly verified and no particular segregating of facts has been made as to which of the facts are verified from his personal knowledge and which are under official information. It is, therefore, submitted that on the simple ground that the pleadings are vague and the affidavit is not properly filed, the election petition is liable to be dismissed. A reference was made to a case

law reported in ***(2013) 4 SCC 776 – G.M. Siddeshwar Vs. Prasanna Kumar*** and contended that the pleading and the affidavit is not proper, therefore, the election petition be dismissed.

(iii) It is further submitted that the petitioner himself had not objected about the caste certificate before the returning officer, but it was objected by Sanjeev Gumasta and Bachhu Bai, however, Bachhu Bai has not been examined before the Court and Sanjeev Gomasta has not stated anything, therefore, the adverse inference be drawn against the petitioner having not proved the case.

(iv) He further submits that in the written statement specific averment was made at Para 32 that the pleadings are not verified as required under the election laws and it is further contended that Ex.P-5 was not obtained by the petitioner from the Tahsildar Pathariya. The said document has not been verified withthe original one and Ex.P-5 has not been proved by the person who obtained it i.e., P.W.3 Sanjeev Gumasta. It is stated that the respondent was bonafide resident of State of Chhattisgarh which would be evident from the document of Family Missal Bandobast marked as Ex.D-5 and is not disputed by the petitioner. It further shows that the respondent's forefathers were residents of village Umariya, Tahsil Mungeli and the document Ex.D-5 relates way back to the year 1927-1928. Thereafter, the father of respondent went to Nagpur as he was an employee of Indian Railways which would be evident

from Ex.D-8(C) which is also pleaded in the written statement and therein, the caste certificate was issued and thereafter Document Ex.D-9(C) would show that the respondent was issued domicile of the Chhattisgarh on 19th April, 2002. Subsequent to it the provisional caste certificate was issued vide Ex.D-10(c) by the State of Chhattisgarh, as such, respondent No.1 originally belongs to this State.

(v) It is further contended that Ex. D-5 & D-6 are the Missal Bandhobast and family tree of the respondent issued by the Kotwar and it would show that Mahtaru's father was Malech and father of Malech was Bishram which is proved by Ex.D-5 and Mahtaru's daughter is R-1 Sarojani Banjari. Therefore, the chain of family tree establishes the fact that respondent was permanent domicile of the State of Chhattisgarh as her forefathers were residents of village Umariya. It is further submitted that the permanent caste certificate Ex.D-2(C) which is the basis of the entire case was not challenged. It is also stated that the competency of issuance officer's certificate was also not challenged by the petitioner and in the Act 2013 also the Circular which was issued by the State Government on 24.09.2013 would show that the direction was issued by the State Government that the SDO was competent to issue the caste certificate. It is further submitted that the petitioner has failed to file the relevant documents to show that the respondent No.1 was the original resident of Nagpur (Maharashtra) and only inference has been drawn.

(vi) He further submits that the election petitioner though has challenged the caste of the respondent/ returned candidate but in the cross examination, categorical admission has been made that she belonged to Satnami and admits the fact that the respondent has not availed any benefit of caste at Maharashtra. It is, therefore, contended that the election petitioner without knowing the facts and particulars about the forefathers of respondent filed the petition only on the basis of hearsay facts. It is further submitted that the respondent has further failed to place on record the fact that how the certificate which was issued is without any authority as the circular is otherwise.

(viii) Referring to further statement of petitioner, it is stated that the petitioner himself never knew what is the caste of the respondent/returned candidate. Only after he lost the election to the returned candidate, he admits that he came to know of the fact through some newspaper report and the report was made, thereafter has filed the petition. Therefore, it is stated that the material facts were not disclosed and as long as the caste certificate is in existence and not annulled by any competent authority, the same cannot be questioned and the election petition is frivolous without any substance and being tainted with malafide, it be dismissed with cost.

6. Now referring to the pleadings, after notice of the petition, the return was filed. On the basis of pleadings of parties, this Court had framed the following issues on

11.09.2014 :

S.No.	Issues	Findings
01.	Whether respondent No.1 has wrongly utilized the Caste Certificate in the nomination paper claiming that she belonged to Scheduled Caste and on such basis, she was not eligible to contest the election ?	**"Not proved"**
02.	Whether section 5(a) of Representation of People Act, 1951 is made to benefit the members of Scheduled Castes/ Scheduled tribes who were born and brought up in the State in which election is to be contested ?	**"Not entitled"**
03.	Whether the acceptance of nomination paper of respondent no.2 Sanjeev Kumar can be questioned in the present election petition on the ground of misjoinder of cause of action and the election petition is liable to be dismissed ?	**"Not proved"**

7. I have heard the respective parties and have also perused the evidence. The issue no.1 which deals with the entire controversy is being adjudicated at first. The election petitioner on his behalf has examined 9 witnesses namely the petitioner Dr. Thaneshwar Patila himself as P.W.1; one Sanjay Shrivastava as P.W.2; Sanjeev Gomasta as P.W.3, M.D. Tigala, Deputy Election Officer as P.W.4, Dr. Sanjeevani Akarte, Vice Principal of S.B.C.T. College, Nagpur as P.W.5, Namita Marcole, Naib Tahsildar as P.W.6; P.K. Gupta, Tahsildar as P.W.7; S.G. Samarth, Tahsildar of Nagpur City, Maharashtra as P.W.8; K.L.Sori, S.D.O., Pathariya as P.W.9 whereas the respondent has examined Sarojani Banjare as D.W.1; Smt. Chandan Tripathi, Joint Director, Bilaspur as D.W.2 Shri Lokesh Kumar Chandrakar, S.D.O., as D.W.3; Rajesh Dhrutlahre as D.W.4; B.R. Banjare as D.W.5), Sitaram

Chouhan Kotwar of village Umariya as D.W.6 and R.K. Tambole, Dy. Collector, Ambikapur as D.W.7.

8. It is contended by the petitioner that respondent No.1 was not qualified to contest the election for the reason that she wrongly utilized the caste certificate in the nomination paper claiming that she belonged to scheduled caste at Chhattisgarh. Therefore, she was not eligible to contest the election. Thus the fact in issue arises in this case whether the respondent wrongly claimed that she belonged to Scheduled Caste at Chhattisarh as she had already obtained benefit of scheduled caste at Maharashtra. In this back ground when the pleadings of the petitioner are seen, it is stated that "*Satnami*" is a scheduled caste at both Maharashtra as well as Chhattisgarh. Further the respondent having already utilized benefit of scheduled caste at Maharashtra could not have claimed the benefit at Chhattisgarh. When the evidence of the petitioner is examined, it is stated that Sarojani Banjare, the returned candidate did not have the caste certificate but in order to get the benefit of the caste for the election on 23.10.2013 in one day the caste certificate was prepared and was issued. The reference is made to College Leaving Certificate of Maharashtra Ex.P-3 issued on 04.10.1999 which is stated to be obtained under the RTI by Sanjeev Gumasta (P.W.3). The petitioner therefore did not obtain such caste certificate herself.

9. Now the statement of Sanjeev Gumasta would show that he was not the election agent or polling agent of

the petitioner Thaneshwar Patila. The witness has deposed that he received the information that Sarojani Banjari was issued the caste certificate from Pathariya, therefore, the application under RTI was given to Tahsildar Pathariya. Ex.P-3 is a photocopy of College Leaving Certificate. Shri P.K. Gupta, Tahsildar Pathariya was examined as P.W.7. This document was not confronted or proved that whether it was issued by the Tahsildar Pathariya. Therefore in absence of such proof or confrontation of document, the authenticity of the document becomes hearsay and the photocopy being not a primary evidence cannot be accepted as a evidence for want of proper proof by the petitioner. Likewise Ex.P-4 also the School Leaving Certificate which was obtained by P.W.3 Sanjeev Gomasta, the same is also not proved by P.W.3 or the person who has issued the said School Leaving Certificate. The author of such document or the person issued the same having not examined, only on basis of photocopy exhibited with objection about admissibility becomes inadmissible in evidence.

10. Another document, the caste certificate issued from the Executive Magistrate, Nagpur, is also filed as Annexure P-5. In respect of this document also, the petitioner submits that the same document was not obtained by him but it was obtained through his supporter Sanjeev Gomasta (P.W.3). P.W.3 has not stated anything in respect of the document and has maintained complete silence in respect of it that whether such documents

were obtained by him or not. This document is also a photocopy. The author of the document has not been called or examined, therefore, in absence of such proof, the same cannot be accepted as admissible in evidence as it was also exhibited with objection.

11. The document Ex.P-6 a letter issued by S.B. City College has been proved by P.W.5 Dr. Sanjeevani Akarte, wherein she has stated that the respondent had received a scholarship of Rs.2035/- in the year 1999 being the student of scheduled caste. She has further stated that the scheduled caste certificate was deposited by the respondent and on that basis, the benefit of scholarship meant for scheduled caste student was given. At this stage, it would be relevant that the petitioner though had produced a photocopy of caste certificate issued to the respondent at Nagapur and exhibited as Ex.P-5 but failed to prove the admissibility of the same. The document produced as Ex.P-6 purports that respondent no.1 was given scholarship as she belonged to scheduled caste. Though it was stated that such scholarship was given on the basis of caste certificate issued by Maharashtra, but in his entire deposition the petitioner failed to bring the fact that such scholarship was given on the basis of Ex.P-5 the alleged caste certificate issued at Maharashtra. Therefore, the petitioner has miserably failed to establish that the benefit of scholarship was given on the basis of any caste certificate issued at Maharashtra. The petitioner has only made his challenge on the basis of

presumption which are self drawn. Therefore, such self drawn presumption cannot be accepted by the Court and will replace the place of acceptable evidence in court of law. The evidence produced by petitioner as such are incomplete and hearsay. Consequently no benefit can be drawn in favour of the petitioner.

12. Now coming back to the fact in issue in this case as to whether the caste certificate was wrongly utilized by the respondent claiming that she was a scheduled caste candidate at Chhattisgarh, the evidence is examined. If the statement of Thaneshwar Patila (P.W.1) is again perused, the allegations are that the respondent had received the scholarship on the strength of Scheduled Caste at Maharashtra and thereafter has again obtained the benefit by preparing the caste certificate at Chhattisgarh to contest the election. First with respect to caste of respondent, in cross examination at para 19, the petitioner has admitted the fact that Sarojani Banjare was married to Jeevan Banjare of Rajnandgaon. The petitioner has further admitted that Jeevan Banjare belongs to Satnami Caste. The petitioner most importantly admitted that Sarojani Banjare also belongs to Satnami caste. Thereafter, it is stated that according to his knowledge Sarojani Banjare belonged to Maharashtra and not of Chhattisgarh's Umariya, Tahsil Pathariya.

13. In the context of above pleadings, the respondent in reply by way of additional submission, has stated that she is actually resident of the State of Chhattisgarh

village Barbaspur, Tahsil and District Rajnandgaon. It is also pleaded and deposed that the father and ancestors of respondent No.1 are the original residents of village Umariya, Tahsil Mungeli, District Mungeli (Bilaspur) and reference is made to the *Missal Bandobast* and the family tree. The caste certificate on which the election was fought is marked as Ex.P-9 by the petitioner and it is also marked by the defendant as Ex.D-2(C). Therefore, Ex.P-9 and D-2(C) are the same documents i.e., the original caste certificate dated 23.10.2013.

14. The petitioner has proved the caste certificate of respondent and it is also proved by the respondent. Reading it with the admission made in cross examination of the petitioner shows that respondent belongs to *Satnami* is not disputed. At para 29 of the Statement, he admits that Satnami *Jaati* (caste) also comes within the category of scheduled caste at Chhattisgarh and also it is admitted that Satnami is covered as scheduled caste at Maharashtra. At para 30, the petitioner admits the suggestion that the father of Sarojani Banjare Mahtaru was working in Railways at Nagpur which he came to know after he received the document. The petitioner also admits the suggestion that Sarojani Banjare was staying with her father during her studies which he could make out after perusal of the document. In answer to the query of Court, the petitioner has admitted the fact that in the year 2013, the temporary and permanent caste certificates were issued from Tahsildar Pathariya and thereafter, permanent caste certificate was issued

by the S.D.O. Therefore, the existence of caste certificate vide Ex.D-2(C) & Ex.P-9 which are one and the same is not in dispute.

15. Now whether such certificate was wrongly issued is an issue to be looked into. In this regard, the evidence adduced by R-1 Sarojani Banjare (D.W.1) would be relevant. She has stated that she belonged to Dongargarh election area of village Barbaspur and the name in the electoral list is proved as Ex.D-3(C) which was proved by the original.

16. Likewise, the identity card issued by the Election Commission of India is proved by the original as Ex.D-4(C) wherein the respondent is shown to be of Dongargarh. The relevant document to decide the fact in issue starts with Ex.D-5 which is a missal Bandhobast of 1927-1928. In such Missal Bandobast, the name of Bishram, son of Rajai Satnami is shown in respect of the land held by him at village Umaria, Tahsil Mungeli, Distt. Bilaspur. It is stated that Bishram son of Rajai Satnami was the great-grand father of R-1. Further the family tree is proved by document Ex.D-6 which shows that Bishram had one son Malech and one daughter Janiya and Malech had 4 sons namely Mehtaru, Sahetar, Neturam and Netram. Mehtaru had 4 children, namely Sarojani, Bhagwati, Saroj Kumar and Hari. It is stated that Sarojani is daughter of Mehtaru. The witness Sitaram, Kotwar, D.W.6 had signed such document. Another revenue document i.e., B-1 Kishtband Kathoni is marked as Ex.D-7 wherein Malech, son of Bishram

Satnami, is shown to be the holder of land.

17. The documents Ex.D-4, D-5 & D-6 having been proved by the original, the objection to it raised at the time of evidence cannot be accepted and they are admitted in evidence. In the cross examination of this witness, the entire reading of it would show even the existence of those documents has not been denied nor any suggestion has been given. There is no whisper in the cross examination also as to why such documents cannot be termed to be fake ones. Only the superficial cross examination has been made which do not destroy the existence of the document or any suggestion is given that why such document cannot be accepted for the reasons given thereof. The documents having been admitted in evidence, the effect of it would be beyond any doubt to demonstrate the relation of respondent and her forefathers and would suggest that forefathers of respondent were residents of village Umariya, Tahsil Pathariya and Distt. Bilaspur.

18. Respondent No.1 has further placed on record Ex.D-8(C) to show that the father of respondent Mehtaru i.e., Malech was working at Central Railway, Ajni, Maharashtra. The document Ex.D-9(C) proved by the original is a domicile certificate of the year 2001-2002. It shows that the respondent was domicile of Barbaspur, Distt. Rajnandgaon. Thereafter, the temporary caste certificate is marked as Ex.D-10(C) issued in the year 2008 and the permanent caste certificate is proved as Ex.D-2(C) dated 23.10.2013. She has further stated that

Missal Bandhobast and the family tree was obtained in the year 2008 since she was looking for a job and wanted to prepare the caste certificate. Therefore, in order to prepare the caste certificate, she had gone to Umariya, thereafter when she was advised that in order to get the caste certificate, the documents of the family tree and Missal Bandobast are required to be obtained, therefore, after obtaining the [illegible]e, application was made for caste certificate.

19. The SDO who had issued the certificate is [illegible]amined as D.W.2. She has deposed that she was working as SDO (Revenue) at Pathariya, Distt. Mungeli She had issued the permanent caste certificate. D[illegible]ination she has proved the authenticity of the permanent caste certificate Ex.D-2(1)(C) and has admitted her signature. In the statement, she has contended that the said certificate was issued for Satnami Caste. She has stated that before issuance of such certificate, the Missal Bandobast was examined and family tree was also examined. It was also stated that the report of the Patwari was also examined and after examining the temporary caste certificate, which was issued by the Tahsildar, the permanent caste certificate certificate was issued by her. She has further stated that she had never received any application to cancel such certificate at any time. In the cross examination of this witness, the petitioner has further proved the case of respondent wherein it is stated that she had brought the original file of the case No. 628-B/121/2013-2014. In the cross

examination, she stated that the applications were not directly placed before her but were filed before Tahsildar and in this case, the application was filed before Tahsildar on 23.10.2013 by Sarojani Banjare. It is stated that Tahsildar on the same date i.e., 23.10.2013 had sent all the documents with the order sheets and on the same date i.e., 23.10.2013, the permanent caste certificate was issued to Sarojani Banjare.

20. Further in cross examination at paras 5 & 6, it is stated that before issuance of the caste certificate, copy of the Missal report or any report of the Patwari in original or copy of it, the family tree prepared by the Patwari or copy of it are placed to prove the family tree of the applicants. Further clarifying the fact, it is stated that in the instant case the certified copy of Missal Bandobast and the family tree placed in original were prepared by Patwari and Sarpanch. The said documents were also separately marked as Ex.D-5 & D-6. This apart, it was also particularly stated that the copy of Aadhar Card, affidavit of Sarojani Banjare and her mother America Bai and copy of the record of Khasra Panchshala issued by the Patwari, the certificate issued by the Sarpanch, the original statement of Patwari, the statement of Sarojani Banjari, the order sheet of Tahsildar and temporary caste certificate issued by Tahsildar, the photocopy of transfer certificate, the photocopy of the marks sheet, the photocopy of the school leaving certificate, temporary caste certificate issued from Rajnandgaon, District and copy thereof, copy of the caste certificate

issued by the Sarpanch, copy of the domicile certificate and Panchnama thereof to the effect that predecessors of Sarojani Banjare were residents of the village, Patwari report as also a caste certificate issued from Nagpur and an affidavit were placed.

21. Further proving the procedure for issuance of caste certificate of the respondent, the cross examination at para 7 further purports that the Patwari report was said to be enclosed of 16.08.2008 and the second Patwari report was prepared on 23.10.2013. Further the clarification is also made that the Patwari before issuance of such certificate verifies the record and also makes an enquiry from the villagers of the said village and then only prepares the report. Subsequently it was stated that the original document of such family tree was not enclosed in the record but the photocopy was enclosed. Further at para 8, explaining the procedure the witness states that after completion of documents, the statements of Kotwar and applicants are recorded by the Tahsildar thereafter it is sent to the SDO. Clarifying further in the cross examination, it is stated that in the instant case, the statements of Patwari and Sarojani Banjare were recorded by Tahsildar on 23.10.2013 itself.

22. Further explaining the issuance of certificate, at para 9 of cross examination, it is stated that when all the documents are received then the permanent caste certificate is issued on the same date. It has been further stated that in the instant case after verification of all the documents and after satisfaction, in the capacity

of SDO, she had issued the caste certificate. Clarifying the process, it is stated that no statements are recorded by the SDO and on the basis of documents put up before it the permanent caste certificates are issued. At para 10 of the statement, she has denied the suggestion given by the petitioner that without verification of the document, the forged caste certificate was issued. Clarifying the fact this witness further stated that there are so many cases of like nature wherein on the same date the caste certificates were issued to the applicants.

23. With respect to power conferred to issue the caste certificate, a notification was made by the State of Chhattisgarh on 24.09.2013 which has been placed for perusal. The notification bears No.F13-22/2012/ A.P/ 1-3 dated 24.09.2013 wherein the power has been given as per Direction No.4.2 even to issue the certificate on filing of affidavit when the documents are not available for caste certificate and after enquiry the caste certificate can be issued. Further Direction 2.1 requires the list of documents which includes the affidavit, the family tree issued by the Patwari, the documents of cut off date to show that the person seeking caste certificate is residing at Chhattisgarh before the notification and after Reorganization of the State of Madhya Pradesh on 1st November, 2000 and any of the documents i.e., family tree (Mishal), revenue records etc. In this case the evidence has come that the required documents i.e., family tree, Mishal Bandobast and the documents showing the ancestors of the respondent No.1 who were

residing at State of Chhattisgarh right from 1927-1928 and the affidavit were placed. Further, the direction 5.3 contained in the notification would show that the SDO has also been given power to issue the caste certificate. In this case, the evidence shows that before issuing the certificate, necessary enquiry was made by Patwari, Tahsildar, Kotwar and lastly the SDO having satisfied the requirements which has been given in the notification of Chhattisgarh dated 24.09.2017 issued the caste certificate.

24. Now coming to the statement of D.W.4 Rajesh Dhritlahre who is also related to respondent it reveals that father of Sarojani Banjari was resident of village Umariya, Tahsil Sargaon, Pathariya, Distt. Mungeli. It is stated that the witness further deposed that the father of Sarojani Banjare was working as Crane Driver at Nagpur. It is stated that at Umariya, she has ancestral house and land and Malech Satnami was grand-father of R-1. In the cross-examination, the witness stated that Mahtaru was borne at Umariya and he was the father of Respondent no.1. He further stated that Mahtaru was not borne at Maharashtra. This witness has deposed the fact which is known to his personal knowledge about the relation. Therefore, taking into the provisions of sections 50 & 51 of the Evidence act, in order to form the opinion of relationship with one person or the other, the person deposed appears to have special means of knowledge on the subject and it being the relevant fact, the same cannot be ignored. Further nothing has come in rebuttal

disowning the same as Ex.D-6 which is family tree would show that Malech is father of Mehtaru i.e., grand father of the respondent.

25. Patwari B.R. Banjare in this case was examined as D.W.5. He has stated that he knew Sarojani Banjare and this witness has prepared Patwari Report (Prativedan). He has further stated that in order to prepare the caste certificate she has approached him for obtaining Patwari Report and on the basis of Missal Bandobast he had prepard the Patwari Report and the Missal Bandobast Pas compared with the original record it is further stated that after comparing the Missal Bandobast and family tree which were prepared by earlier Patwari, thereafter after tallying the names of ancestors of R-1 Sarojani Banjare and furthe after enquiry from villagers, the Patwari report was prepared. In the cross examination, the suggestion given by the petitioner that he has not prepared the report is completely denied. Nothing further has come in the cross examination to disown the version made by him.

26. Likewise the Kotwar D.W.6 namely Sitaram Chauhan has proved Ex.D-6 which is a family tree wherein he stated that Malech had 4 sons namely Mahetaru, Sahettaru, Netram and Netu and father of Malech was Bishram. Further completing the chain, he stated that Sarojani Banjare is daughter of Mahetaru. This witness has stated that Mahetaru, father of Sarojani Banjare, was working at Nagpur and she approached him for preparation of Panchnama and family history. Thereafter the family

tree along-with Panchnama which is marked as Ex.D-6 was prepared by the Patwari and the said document Ex.D-6 was signed by this witness in the capacity of Kotwar. In the cross examination of this witness nothing has been explained so as to challenge the veracity of such statement made to disown the evidence.

27. Witness D.W.7 R.K. Tambole has proved the document Ex. P-15-C which is a caste certificate of respondent. It was tallied with the onginal. The witness said that the said caste certificate was issued by him. in the cross examination, he made a submission that he had come with the record and stated that the application was filed by Sarojani Banjare on 21.10.2013. Thereafter he verified the documents and along-with the applicaticn, the College Leáving Certificate of Nagpur was also attached which shows the caste of Sarojani Banjare as *Satnami*. At para 7 of cross examination, it is stated that along-with the application, one temporary caste certificate was also enclosed which was issued by the Naib Tahsildar, Rajnandgaon on 30.04.2005 and in that caste certificate, the caste of Sarojani Banjare was also shown as Satnami. Further at Para 8, it is stated that along-with the application, the Sarpanch had also issued a caste certificate wherein the caste of respondent was shown as Satnami. The said caste certificate was issued by the Sarpanch of village Umariya and Umariya comes within the District Mungeli. At Para 9, it is stated that along-with the application, copy of domicile certificate

was also filed which was issued by the Sarpanch of village Umariya. At para 10 it is stated that along-with the application, copy of Panchnama was also enclosed which bears the signature of Sarpanch, Kotwar, Ex. Sarpanch and other Panchas. However, it is not tallied with the original. At para 12 it is further stated that along-with the application, one Missal Bandobast, B-1, family tree, were also attached. However, it do not bear any signature and tallied with the original. At para 13, it is stated that along with application, the caste Certificate issued by the Executive Magistrate, Nagpur on 02.07.1994 was also attached wherein the caste of Sarojani Banjare was shown as Satnami. At para 16 it is stated that along with the application, the family tree, the Patwari report were also enclosed which were issued by Patwari and Sarpanch of village Umariya and it was tallied with the patwari's report.

28. The witness has further stated that along-with the application also, an affidavit of America Bai was also enclosed. In addition, copies of P-1, Kishtbandi and Khasra Panchsala, Khasra Missal were also enclosed. According to the witness, the document in which PCN28 is written was issued by the Patwari and he enquired about the same. It is further stated that along-with the application the affidavit of Kotwar of Umariya and statement of Sarojani Banjare was also attached which were recorded by him.

29. Therefore, it would show that the applicant along-with proof of area wherefrom they originated along-with other

document had placed, which in turn was forwarded to SDO and the SDO after being satisfied, had issued the caste certificate. The suggestion given to all the witnesses in this case by the petitioner in cross examination would show that existence of the caste certificate has not been denied, rather the petitioner himself has proved the caste certificate and the manner of issuance of the same. No evidence has been placed on recoed by the petitioner to show that the caste certificate was wrongly issued only the oral statements have been made and the cross examination of the witnesses would show that before issuance of caste certificate to the respondent, detailed enquiry on the whereabouts fromwhere her forefather originates was made. The evidence has come on record that from 1927-1928 the forefathers of respondent were residents of village Umariya, Tahsil Mungeli, Distt. Bilaspur.

30. In the back ground of the evidence, if we look into the statement of the petitioner, at paras 2 & 3 he has stated that the respondent earlier availed the benefit of the caste certificate from State of Maharashtra and therefore according to Article 341 of the Constitution, she could not avail the benefit in other State. The analysis of the statement would show that the election petition is preferred predominantly based on the personal opinion of the petitioner. Therefore, whether the existence of the original caste certificate is forged or false becomes foreign and only opinion of petitioner stands in his favour, which is not a fact in issue at all.

31. The statement of P.W.6 Smt. Namita Markole, Naib Tahsildar, Rajnandgaon would show that the witness of the petitioner has proved the caste of respondent and has further corroborated the case of respondent. At para 2 of her statement, it is stated that on 30.04.2005, the caste certificate was issued to Sarojani Banjare and according to the existing Rules as was in the year 2005, for issuance of caste certificate, the persons were required to file the place of residence of 1950 of applicant. It was stated that Sarojani Banjare had initially filed an application along-with of College Transfer and 12th pass certificate of Nagpur with the photocopy of the same and the affidavit was also filed which would show that Sarojani Banjare had married in the year 1999. At para 7, it is stated that the caste certificate was issued to Sarojani Banjare in the year 2005 itself. No endorsement was made on it whether it was tallied with the original. The pleading and evidence would show that issuance of caste certificate to respndent No.1 in the year 2005 was not a fact in issue in this election petition as such this Court is not required to look into it being irrelevant.

32. Witness P.W.7 P.K. Gupta stated that according to the record on 23.10.2013 the application was filed by Sarojani Banjare for caste certificate which was issued on that date. He further stated that according to record, the order sheets are made, however, in the instant election petition, no order sheets have been filed. Therefore, if the order sheets were not filed which were

available, the petitioner can blame himself for non-filing of the same. The detailed examination-in-chief would show that while the application was filed for caste certificate at para-15 it is stated that along-with the application, all the requisite documents even the certificate of Nagapur University, School Leaving Certificate, Patwari Report, Missal Bandobast of 1927-28, B-1 of 1907-1908, family tree prepared by Patwari on 12.06.2008 were all enclosed which is also corroborated by other witnesses D.W.2 and the cast certificate was issued. Therefore, on analysing the state that of this witness (P.W.7) would show that the petitioner himself brought the evidence on record to show the existence and issuance of caste certificate. Wherever the photocopies are there, even the suggestion has not been given that they were not tallied with the original and only on opinion, the petitioner claims that the caste certificate has wrongly been issued.

33. The Supreme Court in case of ***Jeet Mohinder Singh vs. Harminder Singh Jassi (1999) 9 SCC 386 in para 40*** held that "the success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. The Court further held that setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as relection involves an enormous load on the public funds and administration.

34. Further in ***(2010) 1 SCC 466 – Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao*** the Supreme Court has held that it is a settled principle of law that evidence beyond the pleadings can neither be permitted to be adduced nor can such evidence be taken into account. As such the standard of proof was emphasized in such case law. Similar view was adopted in ***(2000) 8 SCC 191 – Ravinder Singh Vs. Janmeja Singh*** wherein it was also held that "it is an the established proposition that no evidence can be led on a plea not raised in the pleadings and that no amount of evidence can cure defect in the pleadings."

35. further in case law reported in (2014) 1 SCC 46 - Regu Mahesh alias. Regu Maheswar Rao Vs. Rajendra Pratap Bhanj Dev the importance of setting out the sources of information in affdavits came up for consideration and it was held that the sources of information should be clearly disclosed. It was also held that real importance of setting out the sources of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based and that will give an opportunity to the other side to test the genuineness and veracity of the sources of information.

36. Besides this, further when reference is made to section 114(e) of the Evidence Act it raises a presumption of correctness with respect to fact that the Court may presume that the judicial and official act have been regularly performed. The relevant part of section 114(e)

of the Evidence Act is reproduced **herein-below**.

> 114. **Court may presume existence of certain facts**.--The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
>
> (e) that judicial and official acts have regularly performed;

37. The aforesaid principles were affirmed in in AIR 1934 Privy Council 217 - Mohammad Akbar Khan Vs. Mian Musharaf Shah which lays own that in absence of any evidence to the contrary, it ought to be presumed that all necessary formalities were complied with.

38. In this case, if the affidavit and the statements are perused it would reflect that the source of information has been stated to be hearsay and no direct evidence has been given with respect to the caste of respondent. The evidence would also show that the enquiry was made thereby the presumption of official act would follow that the caste certificate was issued in due course.

39. The petitioner has heavily relied on a case law reported in ***(2009) 15 SCC 458 Subhash Chandra Vs. Delhi Subordinate Services Selection Board.*** If the principles of such judgment in the case in hand is applied it would show that the ratio laid down in the said case supports the case of respondent in this case. The petitioner in his evidence has given opinion that having

obtained benefit of Scholarship during her studies in State of Maharashtra, the respondent no.1 wass not entitled to get the benefit of reservation for the category of Scheduled Caste or scheduled tribe in the State of Chhattisgarh. The pleadings and evidence in this case if are examined in the light of the principles laid down by catena of decisions, it would show that evidence is in support of respondent which leans in favour of issuance of caste certificate from the State of Chhattisgarh. The evidence has come on record that forefathers of respondent were residents of Chhattisgarh. The father of respondent migrated to Maharashtra for job but roots remained at Chhattisgarh and thereby the issuance of caste certificate would be governed by Article 341 of the Constitution of India and not by the opinion of petitioner Even if it is admitted that respondent had availed certain benefit of scholarship at Maharashtra though the same is not proved, even then the caste certificate if was issued, after enquiry at Chhattisgarh on the basis of resident of area prior to 1950, the same cannot be called in question merely on the basis of opinion of the petitioner.

40. The petitioner contended in his opinion that once the benefit has been obtained at Maharashtra, it cannot be availed by her at Chhattisgarh in respect of Scheduled Caste but the case law would suggest that it is for the state machinery to identify the caste or tribe which has suffered centuries old ignominy and or suffered other disadvantages. The State of Chhattisgarh herein has

issued the caste certificate to the respondent of Satnami being scheduled caste. Therefore, the petitioner, having accepted the existence of such document of caste certificate cannot agitate that the caste certificate was wrongly issued by the State.

41. Further the petitioner has relied on case laws reported in *1990 3 SCC 130 Marri Chandra Shekhar Seth G.S. Medical College (Supra) and* (... - Action Committee on issue of caste certficate to SC & ST ... Vs. Union of India (Supra). A persusal of both the cases would show that the ratio decided in such judgments lean in favour of respondent No. 1 since the evidence has come on record that the ancestors of respondent No. 1 were residents of State of Chhattisgarh. The ratio decided in such judgment lays down that the schedule caste or scheduled tribe in a state of origin shall get the benefit in that State and not to the other State where because of the transfer of moment of their father or guardian, they have moved. The castes a prescribed in the schedule and the protecti... for education shall be available in the State of origin and therefore, the residence of a particular person in a particular locality assumes a special significance. The residence should not be understood in the liberal or ordinary sense of the word. Therefore, it connotes the permanent residence of a person on the date of the notification of the Presidential Order which schedules the caste/tribe in relation to that locality will assume the importance and the temporary residence in other State

will not have any bearing.

42. The settled proposition has been reiterated in ***2016 (3) Scale 684 – Melwin Chiras Kujur Vs. State of Maharashtra and others*** wherein the Supreme Court again laid down that a person can claim the benefit of SC/ST in the State of origin and can claim the benefit of reservation but upon migration to other states, the same cannot be continued. It was held that the Scheduled Castes and Schedule Tribes belonging to a particular area has to be given protection so-long-as and to the extent they are entitled in order to become equal with others and if the persons of SC/ST migrates from the State of origin to some other State in search of education or employment etc., will be entitled to derive benefits of reservation only from the State of origin and not from the State to which they have migrated.

43. In the instant case the respondent has proved that their ancestors were residents of State of Chhattisgarh origin rather it has been proved by the petitioner himself in the examination of their witnesses that at the time of getting caste certificate, the necessary documents i.e., Missal Bandobast of 1927-28, Khasra Panchshala relating back to the year 1908, the family tree were produced by the respondent and these documents would show that the father of respondent had worked in Railways at Nagpur. Though the ancestors of respondent were residents of state of Chhattisgarh origin but her father had migrated to Maharashtra for employment. Therefore, the respondent no.1 will not loose the benefit which has

given to the family by the State of Chhattisgarh as her ancestors were residents of the State of Chhattisgarh origin. Therefore, even if certain benefit is availed during her studies in State of Maharashtra, the original benefit which is reserved in the in State of origin i.e., Chhattisgarh cannot be denied.

44. In view of the above position of law, In sum and substance, it is clarified that a Scheduled caste/Tribe person who has migrated from the State of origin to some other State for the purpose seeking education, employment etc., will be deemed to be a scheduled Caste/Tribe of the State of his origin and will be entitled to derive the benefits from the State of origin and not from the State to which he/she has migrated.

45. Therefore, taking into the totality of the facts the petitioner except his opinion, the petitioner has not been able to lead any evidence in support of the election petition to show that the caste of Respondent No.1 has any linkage to her birth rather has proved it otherwise. The caste certificate in this case still holds the field which has not been cancelled. The petitioner rather admitted in his deposition that the respondent belonged to Satnami. Thus the caste of respondent no.1 having been admitted by petitioner's own evidence and since the respondent has placed on record ample evidence to show that due enquiry was conducted before issuance of caste certificate, therefore, it cannot be held that the caste certificate issued to respondent on 23.10.2013 was wrong.

46. The term "Scheduled Caste" has been defined to mean such castes, races or tribes as are deemed under Article 341 to the Scheduled Castes for the purpose of the Constitution. When such deeming fiction is created under Art. 366(24) any caste included in the Scheduled Caste by Parliament by virtue of its power under Article 341 is deemed to be a Scheduled Caste and the wisdom of Parliament in that respect cannot be subject matter of any further interpretation in the State of Chhattisgarh, "satnami" has been included in the list of Scheduled Castes and the respondent has proved that her place of origin is State of Chhattisgarh.

47. Now with respect to issue, No. 2 it is settled law that a person belonging to Scheduled Caste in one State cannot be deemed to be in relation to any other State to which he migrates for the purpose of employment or education Lists of Scheduled castes and Scheduled Tribes are declared in relation to each State separately. Therefore, the interpretation would fall out that the reservation made in respect of Scheduled Caste or Tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State. Considering the same, even if a person is born and brought up in another State it will not have any benefit to claim the privileges of Scheduled Caste and Scheduled Tribe except the linkage to birth and roots, therefore, Issue No.2 is answered in negative.

48. With respect to issue no.3, no evidence is on record to appreciate this issue. Not a single document has been

placed on record by either of the parties to adjudicate the validity of acceptance of nomination papers of respondent No.2, therefore, there being no evidence, the issue cannot be adjudicated on its own merits. Certainly the election can be questioned but in absence of any evidence, the same cannot be adjudicated. The answer to this query is therefore held to be not proved.

49. Further entire reading of the pleading and evidence would show that the categorical statements have not been made as to which of the facts or documents are verified from his personal knowledge and which are under official information. The official source has been delegated to hearsay evidence. The admission of the petitioner that he did not have any access to the documents prior to filing of the petition with respect to caste certificate would make it clear that the petition was based on presumption and opinion. Therefore, taking into the entire evidence and pleading, the election of respondent no.1 cannot be set aside only on such presumptive evidence and adverse inference can be drawn against the petitioner for non-filing of the necessary documents. Consequently the petitioner is not entitled to any relief sought in the petition.

50. In view of the foregoing discussions, I am of the view that the petitioner has miserably failed to prove that respondent no.1 cannot get the benefit of Scheduled Caste in State of Chhattisgarh rather it has proved the case of respondent.

51. In the result, the election petition is liable to be and is accordingly dismissed. No order as to costs.

Sd/-

GOUTAM BHADURI
JUDGE

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय मुद्रणालय, रायपुर से मुद्रित तथा प्रकाशित - 2017.